

**DISCLAIMER**

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**COMMONWEALTH OF VIRGINIA, ex rel.  
STATE CORPORATION COMMISSION**

**v.**

**CASE NO. PUE000567**

**AUBON WATER COMPANY,  
Defendant**

**REPORT OF MICHAEL D. THOMAS, HEARING EXAMINER**

**January 24, 2001**

On October 16, 2000, the Commission issued a Rule to Show Cause wherein the Commission's Divisions of Energy Regulation and Public Utility Accounting (the Staff) alleged Aubon Water Company (the Company) failed to comply fully with several of the ordering paragraphs of the Commission's Final Order of December 17, 1999,<sup>1</sup> in that the Company:

- (a) failed to establish an escrow account to be used solely for the payment of expenses related to the construction, operation and maintenance of the water treatment facility to be constructed for the Long Island Estates subdivision in Franklin County, Virginia, within five business days from the effective date of the Final Order;
- (b) failed to deposit the sum of \$2,231.50 into the required escrow account on or before the tenth day of the month, beginning the month after the effective date of this Order;
- (c) failed to file timely quarterly reports to the Commission Staff, with supporting documentation showing all escrow account activity for the preceding three months, within thirty (30) days of the end of each quarter; and
- (d) that by failing to make the required escrow deposits, the Company has diverted rate revenues ordered to be placed in the restricted escrow account and made unauthorized expenditures in violation of the Final Order.

The Staff recommended that the Commission enter a remedial order directing the Company to immediately deposit into the escrow account sufficient cash to bring the escrow account to a fully funded level, as required by the terms of the Commission's Final Order. The Staff computed the fully funded level of the escrow account to be \$16,574.41 as of November 1, 2000. The Commission scheduled a hearing on November 6, 2000, for the Company to show cause why it

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<sup>1</sup> Stephen M. Turner, et al. v. Aubon Water Company, Case No. PUE990002, 1999 S.C.C. Ann. Rep. 459.

should not be required to fund immediately the escrow account for the Long Island Estate's water treatment facility.

On November 6, 2000, the Rule to Show Cause hearing was convened in the General District Courtroom, Franklin County Courthouse, Rocky Mount, Virginia. The Company appeared by its president, G. Ray Boone. The Staff appeared by its counsel, Don R. Mueller. The proof of service of the Rule to Show Cause on the Company was received into evidence as Staff Exhibit A. The Staff presented the testimony of two witnesses, Gregory L. Abbott, a utilities specialist with the Division of Energy Regulation, and Ashley W. Armistead, Jr., a principal public utility accountant with the Division of Public Utility Accounting. Mr. Boone testified on behalf of the Company. A copy of the transcript is filed with this Report.

## **DISCUSSION**

The evidence adduced at the hearing shows that, as of October 31, 2000, the escrow account required by the Commission's Final Order of December 17, 1999, was deficient by a sum of \$4,984.75. (Tr. at 65; Exs. GA-1 and GB-2). Mr. Boone failed to make the required escrow account deposits for the months of June, August and September 2000. (Tr. at 81). The evidence further shows that Mr. Boone used the money that should have been deposited into the escrow account to defray the cost of purchasing water for the Company's Alton Park water system. (Tr. at 69-70, 81-82). Apparently, the well at the Alton Park water system has failed. (Tr. at 95). As of the date of the hearing, the Company expended \$13,726.00 purchasing water for its Alton Park water system. In order to meet demand, the Company is still purchasing water for its Alton Park customers. (Tr. at 83).

Unfortunately, the Company approached this latest crisis in the wrong manner. Instead of dipping into the escrow account to meet unforeseen operational expenses, the Company should have filed a request for a rate increase and placed interim rates into effect that would have covered not only the short-term costs of purchasing water for Alton Park, but also would have covered the long-term cost of installing a new well, pump and storage tank for the Alton Park water system. The monies required to be deposited into the escrow account are additional revenues approved by the Commission for one purpose – the construction of a water treatment facility for the Long Island Estates water system, nothing else. If the water treatment facility is not constructed, then the Company's customers are entitled to a pro rata refund of all monies remaining in the escrow account after all expenses related to the water treatment facility are paid. By dipping into the escrow account, the Company has diverted funds that ultimately may belong to its customers.

## **FINDINGS AND RECOMMENDATIONS**

I find the Company failed to make the escrow account deposits for the months of June, August and September as required by the Commission's Final Order of December 17, 1999. Accordingly, I **RECOMMEND** the Commission enter an order requiring the Company, within 30 days from the date of the Commission's order, to make the escrow account whole. I **FURTHER RECOMMEND** the Commission enter an order enjoining both the Company and its officers from

using funds in the escrow account for any purpose other than that set forth in the Commission's Final Order of December 17, 1999.

### **COMMENTS**

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and Commission Rule 5:16(e)) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within fifteen (15) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

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Michael D. Thomas  
Hearing Examiner